

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)
FOR REVIEW BY:)
)
RICHARD FINLEY,)
)
)
Petitioner.)

CHARGE NO.: 2008CF2542
EEOC NO.: 21BA81442
ALS NO.: 09-0549

ORDER

This matter coming before the Commission by a panel of three, Commissioners Marti Baricevic, Robert S. Enriquez, and Gregory Simoncini, presiding, upon Richard Finley's (Petitioner) Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")¹ of Charge No. 2008CF2542; and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that the Respondent's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

LACK OF SUBSTANTIAL EVIDENCE

In support of which determination the Commission states the following findings of fact and reasons:

1. On March 18, 2008, the Petitioner filed a charge of discrimination with the Respondent. The Petitioner alleged that his employer, the Illinois Environmental Protection Agency ("the Employer"), an Illinois state agency, subjected him to harassment (Count A) and issued him a negative evaluation (Count B) because of his race, Black, in violation of Section 2-102(A) of the Illinois Human Rights Act (the "Act"). On September 10, 2009, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence. On October 5, 2009, the Petitioner filed a timely Request. On November 9, 2009, the Respondent filed its Response to the Request, and on November 20, 2009, the Petitioner filed a timely Reply to the Response.
2. The Employer hired the Petitioner on March 1, 1984 as a Public Service Administrator in the Employer's Des Plaines, Illinois office. The Petitioner became a manager in 1993 or 1994.
3. After the Petitioner became a manager, several of his subordinates complained about his managerial style and claimed that the Petitioner was creating a hostile work environment. On December 21, 2006, the Petitioner's subordinates submitted a signed petition to the Petitioner's manager, asking that the Petitioner be removed "from the chain of command." On

¹ In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge who is requesting review of the Department's action shall be referred to as the "Petitioner."

February 19, 2008, the Petitioner's subordinates submitted a letter to the Employer's Director, in which they complained that the Petitioner had created a hostile work environment. Also in February 2008, the Petitioner's subordinates initiated a secret petition, with their Union's help, to complain about the Petitioner. This petition was also submitted to the Employer's upper level management.

5. The Employer stated that the Petitioner's subordinates' formal complaint regarding the Petitioner to the Union and upper management in February 2008, prompted an investigation into the complaints against the Petitioner. The Employer states this investigation resulted in the Petitioner losing his manager position.
6. On March 12, 2008, the Petitioner discussed his written evaluation with his supervisor, Paul P. The written evaluation covered the time period of June 30, 2006 through the end of February 2008.
7. The evaluation indicated that the Petitioner had "met expectations" in 20 out of 21 criteria listed on the evaluation. The Petitioner had "failed to meet expectations" in the criteria of Human Relations.
8. On March 12, 2008, the Employer transferred the Petitioner to a new location, where the Petitioner had no managerial duties.
9. In his charge, the Petitioner alleged that from at least March 1, 2008 through March 12, 2008, the Employer subjected him to harassment because of his race, in that the Employer stripped the Petitioner of his managerial duties, requested that the Petitioner re-locate to a non-state agency office, and the Petitioner's supervisor told him that all the employees in the Petitioner's office hated him because he is Black. The Petitioner further alleged the Employer issued him a negative performance evaluation because of his race.
10. In his Request, the Petitioner argues that the Employer took no steps to address the Petitioner's complaints that his subordinates did not want to work under a Black manager. The Petitioner denies ever having created a hostile working environment. The Petitioner also contends in his Request that his supervisor actually stripped the Petitioner of his managerial duties on March 7, 2007, at which time the Petitioner's supervisor allegedly told the Petitioner, "They don't like you."
11. In his Reply the Petitioner argues that memoranda he wrote to his subordinates was not confrontational and was no different in tone than memoranda written by non-Black managers and supervisors. The Petitioner states that his criticism of non- Black employees resulted in him receiving a negative performance evaluation although it was acceptable to the Employer when non-Black employees criticized other non-Black employees.
12. In its Response, the Respondent requests that the Commission sustain the dismissal of the Petitioner's charge for lack of substantial evidence based on the Respondent's determination that there was insufficient evidence to support a *prima facie* case of race discrimination or harassment based on race. Further, the Respondent found no evidence the Employer's stated reason for its actions was a pretext for discrimination.

Conclusion

The Commission concludes that the Respondent properly dismissed the Petitioner's charge for lack of substantial evidence. If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. See 775 ILCS 5/7A-102(D). Substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient to support a conclusion. See In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747, * 2 (March 7, 1995)(1995 WL 793258).

As to the Petitioner's claim of racial harassment in Count A, the Commission finds no substantial evidence of racial harassment because the events the Petitioner alleged transpired from March 1, 2008, through March 12, 2008, do not rise to the level of actionable harassment under the Act. In essence, the Petitioner's racial harassment claim is composed of three events: (1) The Employer stripping him of his supervisory authority, (2) The Employer requesting that the Petitioner relocate to a non-state agency office, and (3) The Petitioner's supervisor telling the Petitioner that the Petitioner's subordinates hated him because he is Black.

In his Request, the Petitioner states his supervisor told him, "They don't like you." In his Request the Petitioner does not indicate that his supervisor made reference to the Petitioner's race. However, assuming *arguendo* the Petitioner's supervisor made reference to the Petitioner's race, this isolated statement is not substantial evidence of a pattern of racially motivated events that were so pervasive that they constituted a different term and condition of employment based on the Petitioner's race. See Henry and The Chicago Corporation, ___ILL. HRC Rep.___, Charge No. 1996CF2615, (ALS No. 9653) (February 2, 2001). There, is no substantial evidence the Employer's decision to strip the Petitioner of his managerial authority and to transfer the Petitioner to a new location was a part of a pattern of racial harassment perpetrated by the Employer. Further, given the evidence that the Employer took adverse action against the Petitioner only after the Petitioner's subordinates had filed an official complaint against the Petitioner, the Commission finds no substantial evidence of pretext.

As to Count B, there is no substantial evidence the Petitioner was issued a poor evaluation because of his race. The Commission finds that the Petitioner was not issued a negative performance evaluation by the Employer. Rather, the Petitioner met 20 of 21 expectations. A single low rating in one area in an overall good performance evaluation does not equate to an objectively poor evaluation. Even if this could be objectively considered to be a poor evaluation, there is no substantial evidence the Employer's evaluation of the Petitioner was racially motivated. The Petitioner speculates his subordinates resisted his authority because he is Black. However, this speculation does not provide substantial evidence that the Employer was motivated by racial animus when it cited the Petitioner for his failure to work well with his subordinates.

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show the Respondent's dismissal of his charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

THEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of Petitioner's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and the Illinois Environmental Protection Agency, as Respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this order.

STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

)
)
)

Entered this 28th day of April 2010.

Commissioner Marti Baricevic

Commissioner Robert S. Enriquez

Commissioner Gregory Simoncini